

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NEW YORK

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MIRIAM ABER,

Docket No. 09-CV-490 (ILG)

Plaintiff,

-against-

AMERICAN SECURITY INSURANCE COMPANY,

Defendant.

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AMERICAN SECURITY INSURANCE COMPANY,

Third-Party Plaintiff,

-against-

NUCHEM ABER,

Third-Party Defendant.  
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**MOTION FOR ENTRY OF DEFAULT JUDGMENT  
AGAINST THIRD-PARTY DEFENDANT, NUCHEM ABER**

**COMES NOW** American Security Insurance Company ("ASIC"), Defendant/Third-Party Plaintiff, by and through its attorney and files its Motion for Entry of Default Judgment Against Third-Party Defendant, Nuchem Aber pursuant to Federal Rule of Civil Procedure 55(a), and would show unto the Court the following:

1. Plaintiff Miriam Aber filed a Complaint against ASIC on November 3, 2008, which was removed to this Court on February 6, 2009.
2. ASIC filed a Third-Party Complaint against Third-Party Defendant Nuchem Aber on June 30, 2009. See Third Party Summons and Complaint attached hereto as Exhibit "A."
3. The Third-Party Complaint against Nuchem Aber was served on September 17, 2009 by nailing a copy of the Summons and Complaint to the door of his last known address and mailing a copy of the Summons and Complaint to the last known address in accordance with the applicable rules of the State of New York for service under Fed. R. Civ. P. 4(e)(1). See Affidavit of the process server attached hereto as Exhibit "B."

4. Nuchem Aber's responsive pleading was due on or about October 21, 2009.

5. Aber has failed to answer or otherwise defend as to ASIC's Third-Party Complaint, or to serve a copy of any answer or any other defense which he might have pled, upon the undersigned attorneys of record for ASIC as required by Fed. R. Civ. P. 14(a)(2) and has failed to contact such attorneys to request additional time within which to respond. As a result, Aber has failed to appear, plead or defend within the time allowed by Federal Rule of Civil Procedure 12(a)(1)(B), and therefore, is now in default.

6. ASIC respectfully moves this Court to enter a Default Judgment against Nuchem Aber, adjudicating that he was duly served with a Summons and Third-Party Complaint, that he is not an infant or an unrepresented incompetent person, that he has waived his right to assert any 12(b) defense, and that he has failed to plead or otherwise defend the Third-Party Complaint as required by Federal Rule of Civil Procedure 55(a).

**WHEREFORE**, American Security Insurance Company respectfully requests that this Court enter an order of default against Nuchem Aber as Third-Party Defendant in this litigation. American Security Insurance Company requests any other relief to which the Court deems necessary and proper in the premises.

Dated: February 8, 2010

New York, New York

Lavin, O'Neil, Ricci, Cedrone & DiSipio

By: 

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**and**

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Plaintiff American Security Insurance  
Company